THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 7839 of 2006

Dated: 11.12.2007

Between:

N. Subrahmanyam

… Petitioner

AND

Government of Andhra Pradesh,
Municipal Administration & Urban Development
Department, rep., by its Principal Secretary,
Secretariat, Hyderabad & others.

… Respondents

Counsel for the petitioner : Sri V. Srinivas

Counsel for the respondents : Assistant Government Pleader for
Municipal Administration

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 7839 of 2006

ORDER:-

This writ petition is filed for a writ of mandamus to declare the action of the respondents in depriving the petitioner of use of the land of Ac.5.80 cents shown as excess open space in LP.No.714 of 1994, as arbitrary, unconstitutional and illegal. The petitioner also sought for issuance of a consequential direction to the respondents either to permit him to make use of the said excess open space or to pay compensation at market value to him in respect of the said land.

The facts, which are not in dispute, are that in respect of an extent of Ac.36.02 cents of land situated in Sy.No.332/1, 332/2, 380/A and 380/B of Kallur Village, Krunool District, layout was approved by respondent No.1 on 13.08.1984. As per the requirement envisaged under G.O.Ms.No.377 dated 12.10.1973, 5% of the total area was left as open space and the said extent came to Ac.1.80 cents. In the year 1976 master plan was sanctioned in respect of the Kurnool Municipality and the neighbouring Gram Panchayats under the provisions of the A.P. (Andhra Area) Town Planning Act, 1920 (for short, 'the Act'). The approved layout plan held by the petitioner was included in the said master plan under which an extent of Ac.7.60 cents falling in the petitioner's layout was shown as open space. Thus, an extent

of Ac.5.80 cents was shown to be the area in excess of the legal requirement concerning the extent to be earmarked for open space.

The present writ petition is filed with the grievance that the respondents have neither acquired the said land by paying compensation to the petitioner nor allowed him to utilize the said land.

On behalf of respondent No.2 Sri V.R. Satish Chandra, Director of Town and Country Planning filed counter-affidavit in which an objection is taken that the writ petition is filed after a lapse of 21 years and therefore the same is liable to be dismissed. Respondent No.2 also relied upon Rule 10 (2) of the A.P. Municipalities (Layout) Rules, 1970 (for short, 'the Rules') to buttress their contention that if the area for a layout falls in sanctioned master plan or in town planning scheme for which a draft scheme was already furnished by the Director of Town and Country Planning or in a sanctioned town planning scheme or a master plan for a common public purpose in the interest of general development of that locality, the owner of such land shall transfer such percentage of the area of layout as prescribed in sub-rule (1) of Rule 3 of the Rules. It is therefore stated that the petitioner is not entitled to any compensation or utilize the extent of Ac.5.80 cents for purposes other than the purposes indicated in the master plan.

At the hearing, Sri V. Srinivas, learned counsel for the petitioner submitted that the issue raised by the petitioner in this writ petition is no longer res integra in view of judgment dated 30.07.2003 of this Court in Writ Petition No.1215 of 2000 (**Ganesh Real Estates, Fort Kurnool, rep., by its Managing Partner v.**

The Govt., of A.P. Public Administration and Urban Development Dept., rep., by its Secretary).

Learned Assistant Government Pleader for Municipal Administration argued that in view of Rule 10 of the Rules as mentioned supra, the petitioner is not entitled to the relief sought for in the writ petition. She also argued that in view of the judgments of the Supreme Court in **State of Tamilnadu and others v. L. Krishnam and others**[1], **Government of Andhra Pradesh and others v. Kollutla Obi Reddy and others**[2] and of this Court in **Mehernosh H. Chenoy v. State of A.P., Revenue Department and others**[3] the writ petition deserves to be dismissed on the ground of laches.

I have carefully considered the respective submissions of the learned counsel.

A perusal of the judgment in Writ Petition No.1215 of 2000 shows that the petitioner therein obtained approval of two layouts from the Gram Panchayat of Kallur (same Gram Panchayat as in this case) in the years 1982 and 1985 covering a total area of Ac.18.19 cents. As required under G.O.Ms.No.377 dated 12.10.1973, he left 5% of the total area towards open space. As in this case, the master plan for Kurnool Municipality was prepared in the year 1976 and as against the extent of Ac.1.66 cents, an extent of Ac.3.50 cents is shown towards open space thereby showing an excess of Ac.1.84 cents over and above the statutory requirement towards open space. The petitioner therein made a representation on 05.04.1995 seeking payment of compensation or permission to utilize the said excess land. As his request was not conceded by the respondents, he filed the said writ petition.

Learned Government Pleader, who opposed the writ petition, contended before the learned Judge that the open space required to be set apart under the master plan was 10% and that therefore there was no excess area at all.

In the light of the said submission, the learned Judge has considered the relevant provisions contained in G.O.Ms.No.377 dated 12.10.1973 qua the requirements shown in the master plan. After elaborate consideration of the provisions of the Act, in particular Sections 33 and 34 of the Act, the learned Judge held as under:

> "The 1st respondent published master plan for Kurnool town in 1976. According to that, an area of Ac.3-50 cents in Sy.Nos.703, 708 to 711 and 720 was earmarked for public purpose. Out of this, the petitioner had surrendered Act.1-66 cents under the two layouts. The 3rd respondent did not permit the petitioner to plot out the balance Ac.1-84 cents, on the ground that it was earmarked for public purpose. Therefore, the petitioner submitted an application to the 1st respondent to dereserve Ac.1-84 cents of land or, in the alternative, to pay the compensation.
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> Under Section 33 of the Act, wherever any land is earmarked for public purpose under a master plan, the same is required to be acquired, either under the Land Acquisition Act or as provided for under the Town Planning Act itself. Under Section 34 of the Act, a notification issued under Section 14 thereon is accorded the status of declaration under Section 6 of the Land Acquisition Act. Such a notification came to be issued in respect of the land of the petitioner. Therefore, the 4th respondent or its successor, the 3rd respondent, was required to comply with the provisions of Section 33 and

34 of the Act. It has come on record that the 3rd respondent and its successor, the 4th respondent have expressed their inability to pay the compensation on account of paucity of funds. The correspondence that ensued among the respondents bears ample testimony of these facts.

Acting on the representation of the petitioner, the 1st respondent called for necessary remarks to decide as to whether the land needs to be dereserved. On consideration of the entire matter, the 2nd respondent recommended dereservation through its letter dated 15.01.1997. No proceedings were issued thereafter. The stands taken by the respondents in their respective counter affidavits run contrary to this as well as the provisions of the Act and the relevant Rules. The petitioner cannot be compelled to part with the land without being paid the compensation. The land does not vest in the Government or the local authority, as the case may be simply because it is identified for public under a master plan. The vesting would take place, if only the follow up action in the form of acquisition, be it under that very Act or the Land Acquisition Act, is taken. Admittedly, such course was not adopted by the respondents. the reluctance of respondents 3 and 4 to pay the compensation rules out the possibility of the land being acquired.

Therefore, two eventualities arise. (a) The petitioner itself can use the land in accordance with the purpose specified in the master plan; or (b) The Government has to pass necessary orders dereserving the land from the specific use, in view of the inability of respondents 3 and 4 to pay the compensation.

So far as the 1st eventuality is concerned, a citizen cannot be compelled to put his property to public use. If the State identifies any particular property for public use,

it has to acquire the same and pay compensation, as provided for under the relevant law. Coming to the second aspect, it is true that this court cannot compel any authority to dereserve the land. Such reluctance would be almost absolute in cases where the land was identified for uses other than the public use. For example, if the land is earmarked for the industrial use and the owner thereof wants to put it to residential use, this Court cannot compel the Government to change the use of the land. However, where the land is identified for public purpose, and it is not acquired as provided under Sections 33 and 34 of the Act, the case of non-compliance with the provisions of the Act comes into existence. The master plan, which is a creation under the Act, has to conform to the provisions of that Act. The plan, to the extent it does not conform to the provisions of the Act, cannot be sustained. Necessary modifications have to be made to the plan. In such cases, the exercise of jurisdiction of the Court would be more in the nature of ensuring compliance with the provisions of the Act, than compelling the Government to dereserve the land from public use."

On a careful reading of the said judgment, I am convinced that the facts in both the cases are identical except to the extent that in the other case there were two approved layouts and in the instant case there is only one approved layout. This distinction is not material at all on the issue raised by the petitioner. The learned Judge rejected the contention advanced on behalf of the learned Government Pleader and the counsel for the Kurnool Municipality that since the petitioner is required to leave 10% space, he is not entitled to the relief.

Learned Assistant Government Pleader made a strong attempt to persuade this Court to come to a different conclusion and I am not prepared to accept the contention advanced by her

that the instant case is distinguishable from the case decided by this Court in Writ Petition No.1215 of 2000.

Learned Assistant Government Pleader further argued that in view of the judgments of the Supreme Court cited supra, the writ petition is liable to be thrown out on the ground of laches. I do not feel inclined to accept this contention either. In paragraph 4 of the affidavit, the petitioner narrated in detail the reason for the delayed filing of the present writ petition. It is appropriate to extract the said portion of the affidavit hereunder.

> "It is submitted that the original owner Mr.K.Nagi Reddy has represented to the Grampanchayat, Kallur on 16.01.1985 itself seeksing payment of compensation for the excess open space of 5.80 acres. He has also submitted a reminder on 22.04.1996. The said person died on 17.12.1996 and he executed a Registered Will dated 27.11.1990 itself in favour of his son K. Kodandaramaiah whereby the entire land falling in Sy.Nos.380/A. 331/1 and 332/2 were bequeathed in favour of his son K.Kodandaramaiah. The other Sy.No.380/B was also settled in favour of his son K. Kodandaramaiah by way of a family partition deed during the life time of Mr. Nagi Reddy. Accordingly, Mr. K. Kondandaramiah became the owner of the entire land of 36.20 acres situated in Sy.Nos.380/A, 380/B, 332/1 and 332/2 falling in the layout No.714/84. The said K.Kodandaramaiah also started corresponding with the respondents from 1997 onwards seeking payment of compensation in respect of the excess open land of 5.80 acres. The respondents have not given any reply to him and kept quite. It is submitted that I have purchased all the plots situated in the LEARNED COUNSEL FOR THE PETITIONER No.714/1984 by way of separate registered sale deeds from K.Kodandaramaiah in the year 2005 and I have also purchased the land of 5.80 acres which was categorized as excess open space.

> The said sale was through registered sale deeds No.5300/2005 and 5594/2005. It is relevant to submit here that the required open space of 1.80 acres was aleady passed on by my vendor by way of a gift deed dated 29.01.2002 in favour of Kallur Grampanchayat before it is merged with the Municipal Corporation of Kurnool. I have also represented to the respondents on 2.06.2005 seeking payment of compensation in respect of the excess open space of 5.80 acres since the same cannot be put to any use by me as required under the master plan."

Since the predecessors in title of the petitioner have been making every effort to convince the respondents to accept their claim and the petitioner stepped into their shoes only in the year 2005, I am unable to agree with the contention of the learned Assistant Government Pleader that the relief sought for in the writ petition shall be rejected on the ground of laches. It is very well settled legal position that no period of limitation is prescribed for entertaining a writ petition and whether a writ petition is barred by laches or not is required to be determined with reference to the facts of each case. On the facts of this case, merely because layout was approved in the year 1984 and 30 years had elapsed since then, the writ petition cannot be thrown out without considering the events taken place during the intervening period. Moreover, the learned Assistant Government Pleader has not placed on record whether a similar contention was advanced in the other case, namely, Writ Petition 1215 of 2000. From the judgment in the said case, it does not appear that the respondents have raised any such contention based on laches. Having not raised such a contention in the said writ petition, the respondents are not justified in raising this ground in the present writ petition. It

is also not in dispute that the judgment in Writ Petition 1215 of 2000 attained its finality with its confirmation by the Division Bench vide order dated 05.07.2007 in Writ Appeal No.467 of 2004. Since the petitioner stands on the same footing as the petitioner in Writ Petition No.1215 of 2000, he cannot be denied the relief, which was granted to the petitioner in the said case.

For the aforementioned reasons, the writ petition is allowed in terms of judgment dated 13.07.2003 in Writ Petition No.1215 of 2000 with the direction that the directions contained therein shall be read as part of this order.

C.V. NAGARJUNA REDDY, J

Date: 11.12.2007
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[1] (1996) 1 SCC 250
[2] (2005) 6 SCC 493
[3] 2005 (2) ALT 365